IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 11332 of 2004

Between:

M/s Salute Beverages (P) Ltd. Represented by its Managing Director G.Laxshmana Swamy NH.5 Edulapalem (V), Prathipadu(M) Guntur District

..... PETITIONER

AND

1 The Commercial Tax Officer Lalapet Circle
Guntur
2 Commissioner of Industries Government of Andhra

Pradesh Hyderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a appropriate writ or order or direction particularly in the nature of writ of Mandamus declaring the action of the first respondent in denying the benefit of deferment of sales tax granted to it through the final eligibility certificated by passing the impugned provisional assessment orders and demands for the

Assessment Year 2003-204 (April 2003 to November 2003) dt. 14/06/2004 under APGST & CST Acts as illegal, arbitrary and without authority of law and jurisdiction and set aside the same and also declare that the petitioner's product viz., Frooti is not a soft drink and is entitled for sales tax deferment in terms of the final eligibility certificate granted by the Second respondent

Counsel for the Petitioner:MR.BHASKAR REDDY VEMIREDDY

Counsel for the Respondent No.1 : GP FOR COMMERCIAL TAXES

Counsel for the Respondent No.2 : G.P. FOR INDUSTRIES & COMMERCE.

The Court made the following :

O R D E R (Per MHSA,J)

Vacate stay petition as also the main writ petition have been heard analogously and are being disposed of by this common order.

2. Petitioner claims to be fruit based Juice Company, its product is manufactured under the brand name “Frooti”. Relying upon the G.O.Ms.No.108 Industries and Commerce (IP) Department dated 20.05.1996 it is claimed by the petitioner that the State Level Committee (for short ‘S.L.C.’) has granted eligibility certificate dated 18.5.1999 in file No.20/3/8/0369 fixing the final eligibility of sales tax deferment to a tune of Rs.8,38,78,720/- to be availed of for a period of fourteen years, commencing from 23.12.1998 to 22.12.2012. Pursuant to the industrial policy called ‘Target 2000’, eligible new industrial units are entitled for investment subsidy and sales tax exemption/deferment on fixed capital investment for the period ranging between 7/14 years.

3. It is not in dispute that the S.L.C. has issued to the petitioner final eligibility certificate for the line of activity viz., 'Fruit Pulp and Fruit Based Juice'.

4. The Commercial Tax Department through Commercial Tax Officer – 1st respondent herein, being of the view that the turnover of the petitioner is liable for sales tax being the first sale turnover of soft drinks, proposed assessment provisionally and called for objections of the petitioner, if any, against the proposed assessment. As according to the 1st respondent, petitioner failed to prove that the product "Frooti" manufactured comes under the purview of the 'Fruit Based Juice', rejected the objections filed by the petitioner and confirmed the assessment. Aggrieved thereby, instant writ petition has been filed by the petitioner questioning the demand and thereby the denial of benefit of deferment of Sales Tax.

5. It is the contention of the petitioner that for the earlier period i.e., 1998-99, 1999-2000, 2000-01 and 2001-02, the stand of the petitioner was accepted by the Commercial Tax Officer and in terms of the final eligibility certificate, deferment of sales tax was granted. It was further contended by the learned counsel for the petitioner that the 1st respondent went wrong in coming to the conclusion that the deferment pursuant to the aforesaid certificate was for fresh fruit juices, whereas the deferment granted to the petitioner was for fruit based juices and not for fresh fruit juices. It was further contended that the final eligibility certificate granted by the S.L.C. in terms of G.O.Ms.No.108 is final and conclusive and the commercial tax authorities are bound thereby. Relying upon the judgment of a Division Bench of this Court in VETSTAR AGROS PVT. LTD. V.

C.T.O. learned counsel for the petitioner contended that the action of the respondent – authority in denying the deferment of Sales Tax incentive is wholly without jurisdiction and the same warrants interference by this court. Prayer is made for setting aside the impugned order of assessment and the demand pursuant thereto, as without jurisdiction.

6. No doubt, as contended on behalf of the 1st respondent, impugned order of assessment is appealable under Section 19 of A.P.G.S.T. Act, 1957. However the question in the instant writ petition being one with regard to the jurisdiction of the 1st respondent to demand payment pursuant to the impugned order of assessment, during the subsistence of the eligibility certificate, we are inclined to accept the submission made on behalf of the petitioner, that writ petition is maintainable. Therefore, the only question arising for consideration in the instant writ petition is whether the 1st respondent could make a demand for payment of Sales Tax pursuant to order of the assessment during the subsistence of final eligibility certificate granted by the S.L.C.

7. In Vetstar's case (cited supra) it was held that the tax authorities cannot coerce the dealer to pay sales tax ignoring the final eligibility certificate. As regards the finality attached to the final eligibility certificate granted by the S.L.C. is concerned, it was held as under:

> "2. . . . It cannot be gainsaid that by virtue of the final eligibility certificate issued by the General Manager, petitioner – assessee is entitled to seek benefit of the certificate. In the first place, the authorities of the Commercial Tax Department are not appropriate authorities who are armed with necessary power to cancel or modify the final

> eligibility certificate issued by the General Manager. If the officers of the Commercial Tax Department have any credible information that the petitioner commenced the commercial production anterior to the date specified in the final eligibility certificate, they may pass on the same to the General Manager who is entitled to take appropriate action against the petitioner."

8 . In that case the writ petition was disposed of directing the Commercial Tax Officer not to coerce the petitioner to pay tax so long as the final eligibility certificate is not cancelled or modified.

9. From the counter affidavit filed on behalf of 2nd respondent and the submissions on its behalf by the learned Government Pleader it would suffice to state that the same are based upon the aforesaid judgment in Vetstar's case as regards the finality attached to the eligibility certificate issued by S.L.C.. 2nd respondent has referred to the manufacturing process of "Frooti" in its counter affidavit and stated that the petitioner's unit has been granted final eligibility certificate for the line of activity 'Fruit Pulp and Fruit Based Juices'.

10. On the other hand the contention of the learned counsel for 1st respondent appears to be that the petitioner – assessee is attempting to avail of the incentives by classifying its product "Frooti" as 'Fruit Based Juice'. According to the 1st respondent petitioner is not eligible for the aforesaid incentive if the product "Frooti" falls into the category of 'soft drink'. It was further contended on behalf of the 1st respondent that the assessing authority has only attempted to prevent the petitioner from availing incentives, which are not conferred on it under the eligibility certificate granted by the S.L.C.

11. We find no substance in the aforesaid contention, as according to the averments in the counter-affidavit of 1st respondent the objection is with regard to the eligibility of the petitioner to the grant of very certificate by the S.L.C. According to the 1st respondent the product “Frooti” does not fall into the category of ‘Fruit Based Juices’ as it involves series of processes, starting from manufacture of fruit pulp to converting the fruit pulp into an edible drink. According to the counter affidavit of the 1st respondent the manufacture of pulp is the basic activity for the manufacture of “Frooti” and this important manufacturing activity is not undertaken by the dealer. Thus, it would appear that the impugned assessment is sought to be justified mainly on the ground that petitioner is not eligible for grant of the eligibility certificate, issued by the S.L.C. pursuant to G.O.Ms.No.108.

12. In the light of the judgment in Vetstar’s case (1 supra) such a question as to the eligibility of the petitioner for grant of the eligibility certificate, being within the province of S.L.C., same is not within the jurisdiction of the Commercial Tax Officer. If according to the 1st respondent petitioner is not eligible for grant of incentive benefits under the aforesaid G.O.Ms.No.108, then it is for the 1st respondent to take up the matter with the competent authority for cancellation/modification of the final eligibility certificate issued.

13. In the circumstances, we are inclined to dispose of the writ petition with the similar directions as in Vetstar Agros case viz; that petitioner shall not be compelled to pay and, therefore, no coercive steps shall be taken for recovery of tax pursuant to the impugned order of assessment.

14. This order shall not preclude the 1st respondent from taking such other action as may be open to it in law with regard to the cancellation/modification of the final eligibility certificate.

15. With the directions and observations as above, writ petition stands disposed of.

16. However, in the facts and circumstances of the case, there shall be no order as to costs.

M.H.S.ANSARI,J

T.CH.SURYA RAO, J

DATE:17.01.2005

AVS

To

1 The Commercial Tax Officer Lalapet Circle
Guntur
2 Commissioner of Industries Government of Andhra

Pradesh Hyderabad

3. Two C.Cs. to G.P. for Commercial Taxes, A.P. High Court

Buildings (O.U.T.).

4. Two C.Cs. to G.P. for Industries and Commerce, A.P.High

Court Buildings (O.U.T.)

5. Two C.D. copies.